

MINUTES

MONTANA SENATE 58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON LOCAL GOVERNMENT

Call to Order: By **CHAIRMAN JOHN C. BOHLINGER**, on February 20, 2003 at 3:30 P.M., in Room 102 Capitol.

ROLL CALL

Members Present:

Sen. John C. Bohlinger, Chairman (R)
Sen. John Esp, Vice Chairman (R)
Sen. Jerry W. Black (R)
Sen. Brent R. Cromley (D)
Sen. Jim Elliott (D)
Sen. Kelly Gebhardt (R)
Sen. Bill Glaser (R)
Sen. Rick Laible (R)
Sen. Jeff Mangan (D)
Sen. Carolyn Squires (D)
Sen. Mike Wheat (D)

Members Excused: None.

Members Absent: None.

Staff Present: Leanne Kurtz, Legislative Branch
Phoebe Olson, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: SB 399, 2/17/2003; SB 406,
2/17/2003; SB 370, 2/12/2003
Executive Action: SB 426, SB 293, SB 399, SB 406

HEARING ON SB 399

Sponsor: SENATOR JOHN BOHLINGER, SD 7, Billings

Proponents:

None

Opponents:

None

Informational Testimony:

Mike Halligan, Washington Corporation

Opening Statement by Sponsor:

SENATOR JOHN BOHLINGER, SD 7, Billings submitted his opening statement. **EXHIBIT**(los38a01)

Informational Testimony:

Mike Halligan, Washington Corporation said this was informational testimony because it was a bill generated by Senator Bohlinger. He thought the important parts of the bill were the local control aspects. He said they had an amendment that requested when there were discussions with the local government body and the federal government that the railroads participate in those discussions. He also asked that the committee take a look at the limitation on liability section. He said the railroad preferred to sound the horn at every public and private crossing because of the liability issues associated with that. He said that particular provision was important to the bill.

Questions from Committee Members and Responses:

SENATOR JEFF MANGAN asked **Mr. Halligan** if there were quiet zones in other states, or if we were the first state to take a look at this.

Mike Halligan said the federal law had been in place for awhile, and because of the expenditures required by local governments in order to put the safety measures in place when they develop a quiet zone he was not aware of any place in the northwest that had done it. He thought **Mr. Berry** might have that information.

SENATOR MANGAN referred that question to **Mr. Berry**.

Leo Berry, Burlington Northern Sante Fe Railroad said he did not think there were any quiet zones that had been created at this time. He said the secretary was still creating rules, but there were different communities experimenting with it, Spokane being one.

SENATOR MIKE WHEAT said that in his neck of the woods, not only do they not like the sound of the bells and whistles, they do not like the speed at which the train travels through their communities. He asked what the supplemental safety measures were.

SENATOR BOHLINGER replied that in the rule making, they were developing supplemental safety measures. He said part of that were the crossing gates, as well as lanes of traffic and barricades that would prohibit people from driving around the gates. He was not aware of anything in respect to the speed at which a train traveled.

SENATOR WHEAT said with all due deference to the bill, if they did not even know what was in the regulations that define what these supplemental safety measure were going to be, was the bill a little premature.

SENATOR BOHLINGER replied this bill would position them so that when the rules had been adopted and made available, they would have their ore in the water.

SENATOR CAROLYN SQUIRES said it was her understanding that the whistles and bells were for public safety. She said there was a railroad that ran through the middle of here district that did not have lights on it, and she was concerned if they had a quiet zone in that area, someone would be hit by a train, and the railroad would not be liable.

SENATOR BOHLINGER replied that under the rules that were being developed there would be crossing gates that would be required and traffic lanes would be established that would prohibit people from driving around the gates. He said safety measured would be built into a quiet zone plan. He said lights would flash, the horn would just not blow.

SENATOR SQUIRES asked who would pay for it.

SENATOR BOHLINGER replied that these costs would have to be borne by the communities that wished to establish quiet zones.

SENATOR SQUIRES said they had a train that ran all the way across Missoula, and she imagined some parts of the city would want quiet zones and some would not. How do you balance that.

SENATOR BOHLINGER said this was a local control issues, once enabling legislation has been made available the folks back home can decide how to fund it or whether they even want to adopt it.

SENATOR JIM ELLIOT asked **Leo Berry** to mention the quiet zone study in Spokane.

Leo Berry related that had been mentioned in the previous discussion amongst the committee. He said that **Pat Keim** thought there were video tapes available to look at.

Closing by Sponsor:

SENATOR BOHLINGER thanked the committee for the opportunity to introduce the idea. He looked forward to discussing it in executive action.

HEARING ON SB 406

Sponsor: **SENATOR DAN MCGEE, SD 11, Laurel**

Proponents:

Dennis Lay, MT Association of Registered Land Surveyors
Steve Anderson, MT Association of Registered Land Surveyors
John Prinkki, Carbon County

Opponents:

None

Opening Statement by Sponsor:

SENATOR DAN MCGEE, SD 11, Laurel said this was a general clean up bill of some subdivision statutes. He said there were two substantive alterations he would bring to their attention. He said he was a registered surveyor in three states and if he were to go survey the houses across the street, there was not a clear format under current law to file information about the survey he had just done. He said if a property owner called and asked him to find their property corners, and he went to look for them, he would either find them or not. If they are not there, he might have to search outside the particular lot to reestablish the corners back in. He said when that takes place the surveyor does not have a form to provide a public record of that activity so the next person going out to look for those same pins, would have that record to cover them. He said this bill would allow for a filing of a property corner record, that documents that kind of

information. He said the point was when you found a discrepancy, you wanted to be able to document that so the next person doesn't have to repeat everything you did to understand the discrepancy. He said the problem was the certificate of survey format itself was not used in subdivision practices. He said you cannot file a certificate of survey over the top of a subdivision plat. He said the first section of the bill was designed to allow a format to file information about property corners. He said the second part of the bill would allow for a mortgage tract survey for purposes of identifying a parcel of land that would be used as collateral for a lending institution. He said there had been some issues about mortgage surveys, and this was trying to address several things. First under current law there was a dispute as to whether or not you can use the mortgage exemption parcel for refinance purposes. This bill says you can. He thought prior to 1988 most surveyors believed that a mortgage survey done in the state of Montana really did not create a parcel unless there was a foreclosure. He said in 1988 the attorney general wrote an opinion that said that was indeed a marketable piece of land and that the title may be transferred. That changed the way things were done in Montana quite a bit. He said in the past few years mortgage exemptions had been used in order to convey title to property without any review by the subdivision process or without any review by the DEQ. He said he did not think anyone ever intended for the mortgage exemption to be a loop hole in the law, that someone could use to evade the act. So this bill says it can be any size, and if the land that is divided is not conveyed to an entity other than the financial or lending institution to which the mortgage, loan, or trust indenture was conveyed this division of land would be subject to the requirements of this chapter, which means subdivision review process and DEQ review process. He said the last section of the bill was clean up language. He said all this was really was general clean up, but there was the substantive issue about the mortgage parcels he thought they should know about. He said he would be glad to answer questions.

{Tape: 1; Side: B}

Proponents' Testimony:

Dennis Lay, MT Association of Registered Land Surveyors said they would like to go on record in favor of the bill. He said they believed it cleaned up a lot of problems, and that it would reduce a lot of paper work for the clerk and recorder. He said the portion that allows them to file corner recordations in lieu of a certificate of survey would eliminate a lot of work and save the client a fair amount of money, and free up county staff for other more important things.

Steve Anderson, MT Association of Registered Land Surveyors said he was in support of the bill. He said the difference in price between a corner record and certificate of survey was about \$300. He said one of the reasons that this came up was some surveyors were not filing certificates of survey as required. He maintained they wanted to make it as easy as they could for people to comply with the law. He said his association was also in favor of the other parts of the bill that had been discussed. He was glad to see that the mortgage exemption would be clarified. He thanked the committee.

John Prinkki, Carbon County said he was in support of the bill. He said he had visited with the registered surveyor in Carbon County who was in support of the bill as well.

Opponents' Testimony:

None

Questions from Committee Members and Responses:

SENATOR WHEAT asked the sponsor to describe the kind of document that would be filed in place of the certificate of survey.

SENATOR MCGEE replied you would see the same type of document filed as is currently filed as a corner recordation form.

SENATOR WHEAT asked if documents of this nature are filed with the clerk and recorder at the present time.

SENATOR MCGEE replied no.

SENATOR WHEAT asked if you were hired to adjust a boundary line between two neighbors in a platted subdivision, are you required under existing law to file a certificate of survey.

SENATOR MCGEE replied no, that would be an amended subdivision plat.

SENATOR WHEAT asked if under the previous example with this bill, would you be able to file a corner certificate.

SENATOR MCGEE replied no. He said this only applied to a boundary that already exists.

SENATOR WHEAT asked about the new language on line 22. He said it looked like an exemption was being created to certain divisions of land.

SENATOR MCGEE said he knew he had forgotten to mention that. He said under 76-3-207 there are other exemptions to the subdivision and patting act. He said you would still have to file a certificate of survey and show the parcel. He said the classic case would be a parcel created for agricultural purposes. He said they were not reviewed by local county planning board, and is also exempt from review by the sanitation and subdivision act because there are restrictions from its use. He said they were specifically talking about defining a road track for example. He said there was not anything under current law to file that survey. He said there could also be a utility sighting that does not require sewer or water so there is an exemption from that review as well. He hoped this was a catch all.

SENATOR WHEAT said he was focused on this because in Gallatin County there seemed to an ongoing battle between the commissioners and people who want to subdivide family divisions. He thought this language might be broad enough that it might open doors that were not intended to be open.

SENATOR MCGEE replied he trusted **Senator Wheat** to come up with language to amend the bill. He said it was not his intent to create an avenue for further evasion of the act. He said what they were trying to say was non-residential sites not requiring sewer or water.

Closing by Sponsor:

SENATOR MCGEE said he had closed.

HEARING ON SB 370

Sponsor: **SENATOR KELLY GEBHARDT, SD 4, Roundup**

Proponents:

Dennis McCave, Yellowstone County Sheriff
Gordon Morris, MT Association of Counties
Alec Hansen, League of Cities and Towns
Mike McMeekin, Missoula County Sheriff
Kent Funyak, Cascade County Sheriff
Leo Gallagher, Lewis and Clark County
Don Hargrove, Gallatin County
John Ostlund, Yellowstone County
Dan O'Fallon, Cascade County Sheriff

Opponents:

Pat Melby, MT Medical Association

John Flink, MHA An Association of MT Health Care Providers

Kathy Kenyon, Deaconess Billings Clinic

Tom Ebzery, St. Vincents Healthcare, Holy Rosary Healthcare, St.

James Healthcare

Opening Statement by Sponsor:

SENATOR JEFF MANGAN, presented the bill in **SENATOR GEBHARDT'S** absence. He said detention costs and inmate medical costs had been an issue for counties and local governments for some time. He said this bill attempted to address that. He said he would not stand there and propert to them everything the bill did, even though he was familiar with the subject. He believed there were more than enough proponents that could discuss the benefits of the bill and the opponents could address the negatives.

Proponents' Testimony:

Dennis McCave, Yellowstone County Sheriff, submitted written testimony. **EXHIBIT(los38a02)**

Gordon Morris, MT Association of Counties said this bill was brought to you courtesy of MACO, he pointed out that if this bill were law today, the state general fund would recoup approximately \$165,000 dollars a year with the cost savings of the Montana Highway Patrol alone. He thought that was a significant issue. He said people were ending up in jail and the county was responsible for paying for their health care. He maintained if that same person was not in jail, that person would have to cover his own costs or they would be picked up by medicaid or medicare. He did not think that just because someone was arrested that should change. He thought the bill was proper, and he pointed out the savings. He asked for their favorable consideration.

Alec Hansen, League of Cities and Towns said that people that live in cities pay taxes for the county jail. He maintained that if the bill saved counties money, it would save city taxpayers money. He wanted to inform the committee that they had discussed an amendment with the sponsor and that he had agreed with it.

Mike McMeekin, Missoula County Sheriff said he supported what **Captain McCave** had stated so eloquently. He said the bill provided an adequate and appropriate balance between their need to take care of the health care issues of people incarcerated in their jails but also their accountability to their taxpayers. He also wanted to be on record in support of the amendment.

Kent Funyak, Cascade County Sheriff submitted written testimony.
EXHIBIT (los38a03)

Leo Gallagher, Lewis and Clark County said they were in support of the bill for all the reasons stated. He said often they make decisions to let someone out who should not be on the street because they can't pay there medical bills. So he maintained it was a public safety issue as well.

Don Hargrove, Gallatin County said they wanted to be on record in support of the bill.

John Ostlund, Yellowstone County said they wanted to express support from the Yellowstone County Commission for the bill.

Dan O'Fallon, Cascade County Sheriff gave the committee some statistics. He said currently they had 144 inmates and 44 of them had pre-existing conditions that require prescriptions, that total \$3500 a month. **{Tape: 2; Side: A}** He said he was in great support of SB 370.

Kathy Frame, Flathead County Sheriff said they would like to support the bill. She said in the past 3 years there medical budget had gone from \$85,000 to \$180,000 a year. She thought that was the bottom line for the taxpayers.

Opponents' Testimony:

Pat Melby, MT Medical Association said they were opposed to the bill in it's present form. He said they were certainly not opposed to the idea that an incarcerated individual who can pay for their healthcare should do so. He said their problem with the bill was on page 2, lines 22 and 23. He said that clause requires that if the inmate was able to pay, the healthcare provider has to chase the inmate down for payment. He said that created a problem. He said some physicians had told him that if they have to chase down payments they would not provide their services to the county any longer. Consequently there would be no primary care for these individuals and they would end up in hospital emergency rooms. He said that with the deletion of those two lines the that this would be a good bill.

John Flink, MHA An Association of MT Health Care Providers, said they were in opposition to the bill. He said they were not opposed to the concept, but this bill gave the illusion of making prisoners responsible for making their payments when in fact the real impact would be to increase the uncompensated care that hospitals already provide in Montana.

The problem that this bill attempts to address is one that has been around for some time. If a court has determined that a person has the resources to personally pay for the medical treatment the county may collect those costs already. He said most prisoners are often unable to hold a regular job, and don't have the money to pay for private health insurance, and medicare and medicaid are not an issue. In this kind of situation if the county doesn't pay the burden falls on the facilities. He liked the concept but said they needed to be careful how they made prisoners pay for their own healthcare.

Kathy Kenyon, Deaconess Billings Clinic said they had been negotiating for about the past 14 months over payments for prisoners from the county detention center. She said in 2002 the county admits owing the clinic about \$163,000. She believed that was part of the reason for this bill. She said Yellowstone County was strapped and would rather not pay for most of the medical expenses of the county prisoners. She maintained they were sympathetic to the county detention centers economic woes, but the Clinic was also in the red right now. She said bad debt alone would be over 16 million dollars this year. She understood the problems of the county not having enough money but maintained the clinic did not have enough money either. She said the basic policy question was who should pay for detention center prisoners who do not have the resources to pay for themselves. She said if they had the resources to pay for themselves, then under current law the county could collect from them. She said if the prisoners medical bills were not paid for by the county they become bad debt. She said that would lead to cost shifting, which would increase the prices to local employers. She asserted that ultimately this bill increased health care bad debt and resulted in higher charges to local government and private employers. She did not think that was good public policy. She said the due process clause of both the Montana and US constitutions required that the detention centers feed and procure needed medical care. She said when you provide services you expect to be paid. She said you can not expect for private non-profit health care providers to absorb the costs of the medical expenses for the people who have been detained in prisons.

Tom Ebzery, St. Vincents Healthcare, Holy Rosary Healthcare, St. James Healthcare said he opposed the bill for many of the reasons given.

Questions from Committee Members and Responses:

SENATOR RICK LAIBLE asked **Mr. Ebzery** if there was some way to collect this money without having to place the healthcare providers on the hook.

Tom Ebzery thought the counties had probably attempted to recover their payments and had come up short, and would rather put the onus on the provider to collect that. He maintained the county should be the collector not the provider.

SENATOR WHEAT asked **Gordon Morris** if he knew how many inmates across the state on an average basis have insurance coverage.

Gordon Morris replied he did not have that information. He said he would be happy to try find it.

SENATOR WHEAT said maybe that was too broad. He asked on a percentage basis how much of inmate medical expenses are paid by the inmates personal insurance and how much is paid by the county.

Gordon Morris said there had been a limited number of cases where a third party provider has paid, but they were very few. He said it was an insignificant figure of those who actually have insurance that can be gone after.

SENATOR WHEAT said in effect they were shifting the costs from the county to the medical provider.

Gordon Morris replied yes you could consider it a cost shift. He said whatever way you looked at it, the taxpayers were paying for it.

SENATOR WHEAT said in the act of balancing who gets to pay, did he think it was more fair that the healthcare providers pay or more fair to spread it out across all the taxpayers.

Gordon Morris responded that if this person was not incarcerated and showed up in the emergency room, who would pay for it.

SENATOR JOHN ESP asked **Dennis McCave** when someone comes into the jail and needs medical attention, did they give the bill to the court, and the court says they pay the bill as part of the fine or how did they collect it now.

Dennis McCave said section one allows for the court in their sentencing to have them pay full costs of incarceration, including medical costs. He said what they had been doing, when they receive invoices they evaluate whether they were self inflicted or pre-existing, if they were they return them to the

hospital. If they have an accident or contract an illness while incarcerated the county pays for those costs.

SENATOR ESP asked how they collected the money for an injury or illness that occurred while incarcerated if the inmate had the ability to pay.

Dennis McCave said most of the time they don't, and he did not have the money to hire a staff to do investigative and billing services in that respect, so they absorb the costs of those who are injured inside the facility.

SENATOR ESP asked if they absorb the costs for some other reason than injuries.

Dennis McCave replied they did.

SENATOR ESP asked **Kathy Kenyon** if what they had just heard from **Dennis McCave** was an accurate reflection.

Kathy Kenyon said that in 1995 **Senator Maxwell** sent Deaconess Clinic a letter that said based upon his interpretation of the law at the time they would no longer pay for county detention center inmates. She said at that point the Billings staff accepted that. She said in 2001 the CFO asked if that was in fact existing Montana law and it was not. In 1997 the Attorney General had issued an advisory opinion making it very clear that the counties were responsible for paying the medical costs of detainees in the county detention center. At that point they approached the county and attempted to collect. She said the county went back and got a follow up letter from the Attorney General that did reiterate the county detention center was responsible for the charges. She said during the period of time when they were accepting the counties position, what happened was that became bad debt. She estimated that they wrote off about half-million to a million dollars during 1995 and 2001.

SENATOR ESP said during the time that they county was not paying, you absorbed the costs of all pre-existing and self inflicted injuries and the county paid you for other things.

Kathy Kenyon said during that period of time the payments received from the county were extremely modest. She said overwhelmingly the expenses for the prisoners in the detention center fall into the categories of pre-existing conditions, self inflicted wounds, or injuries that occur as a result of the inmates own actions.

SENATOR ESP asked if serious mental illness fell under pre-existing conditions in this bill

Kathy Kenyon said certainly serious mental illness did fall under pre-existing conditions.

SENATOR SQUIRES asked how long the average stay of an inmate was.

Dennis McCave said it was deceiving to give a number from Billings. He said the average stay in Yellowstone County was 18 days. He said they processed about 8,000 prisoners a year. He said there was a core of inmates that stayed anywhere from six months to a year and half. He said another third ran between thirty and ninety days, and the rest filtered through quite quickly.

SENATOR SQUIRES asked if they had a problem in the area of mental health, relating to drug problems where they had gone off their medication because it wasn't paid for.

Dennis McCave said that was an extremely common occurrence in all facilities.

SENATOR SQUIRES asked if he did anything with negotiations for wages within his facility. She asked if he understood what the lady from the hospital was saying about the cost shift.

Dennis McCave replied yes he did. He said it was his perspective that they operated under this system for the past six years, and he thought there had not been a lot of suffering on the part of the healthcare facility in Billings. He thought they had actually expanded and flourished. He said they were better equipped to handle this sort of issue, and he thought the cost shift was comparative to their budget and his budget being very different.

SENATOR SQUIRES said she did understand that, but her concern was that it be spread out over a larger group of people that have a possibility of paying taxes. She said the people that go to jail are people as well, and she did not think they should get lower levels of health care.

{Tape: 2; Side: B}

SENATOR BRENT CROMLEY thought **Dennis McCave** had said there was some medical staff at the facility. He assumed that some medical treatment was provided in house.

Dennis McCave replied that was correct.

SENATOR CROMLEY asked if the cost of that treatment was billed to the inmate.

Dennis McCave replied no it was not at this time.

Closing by Sponsor:

SENATOR MANGAN thanked the proponents and opponents for a good hearing. He said although **Senator Gebhardt** was not there he would address a couple issues. He said it wasn't just a Billings issue. He maintained it was a Montana issue. He said the rising medical cost issues were just as real for detention centers as they were for hospitals and families. He said they needed to grapple with this and figure out how to keep the counties whole and still ensure that those inmates are getting the needed medical care, and not compromise public safety. He said it was a problem across the state, he did understand what the proponents were talking about with cost shifts, but this bill was a bill that the committee should spend some time on.

HEARING ON SB 372

Sponsor: **SENATOR RICK LAIBLE, SD 30, Victor**

Proponents:

Mike Knodel, Rocky Mountain Road Maintenance
John Hansen Jr, COP Construction Company
Bill McGuire, Blatinity Construction
Paul Thompson, Gilman Construction
Tim Crennen, JTL Group, Inc
Ray Becky, RoBec Contruction
Mike Newton, Fisher Sand and Gravel
Chris Hafer, H&H Contracting Inc.
Kenny Gray, Highway Specialties Inc.
G. Schmidt, Schellinger Construction
John Eyde, Pioneer Equipment
Ed Maronich, Maronich Construction
Lonnie Anderson, United Materials
Cary Hegreberg, MT Contractors Association
Byron Roberts, MT Building Industry Association
Carl Schweitzer, ASAM
Riley Johnson, NFIB
Webb Brown, MT Chamber of Commerce

Opponents:

Alec Hansen, League of Cities and Towns
 Jean Curtiss, Missoula County
 Judy Jacobson, Butte SilverBow
 Dave Schultz, Assistant Pubic Works Director, Butte
 Jani McCall, City of Billings
 Bill Iconcgggle, Glacier County
 John Ostlund, Yellowstone County
 Eric Griffin, Lewis and Clark County
 Dave O'Connel, Public Employees Labor Local 254
 Bruce Bender, City of Missoula
 Clark Johnson, City of Bozeman
 Glen Gregor, Laborers Local 254
 J Gail Patton, Sanders County
 Gordon Morris, MT Association of Counties
 Mona Jamison, Gallatin County
 Joe Mazurek, City of Great Falls
 Jack Knorr, MACRS
 Tim Burton, City of Helena
 Vern Peterson, MT Association of Counties
 Elaine Allestad, Sweet Grass County
 Tom Schneider, MPEA
 Jim Reno, Yellowstone County
 Don Judge, Local Teamster 254

Opening Statement by Sponsor:

SENATOR RICK LAIBLE, SD 30, Victor read the existing statute that this bill deals with, 75-23-01. He said this bill was about fairness. He said it's about giving local contractors an opportunity to participate in construction projects within their communities. The current statutes regarding these issues allows cities to build any building, and road, and bridge no matter what the costs. Here is the problem. The local governments are funded by taxpayer dollars, paid by contractors within the community. How do local ethical building contractors compete against the county construction department when the county doesn't have to pay prevailing wages, doesn't have to account for overhead, doesn't have to bond the projects and doesn't have to account for the costs for maintenance or capitalization for their equipment. He maintained section 1, was really the existing language, including the \$50,000.00 threshold with the addition of management services other than routine maintenance as defined. This section eliminates the reference to building, road or bridge. To provide the counties and municipalities flexibility routine maintenance was generously defined. He went on to say, Section 2, deal with municipalities with some clarification and

increasing of the threshold amount from \$25,000 to \$50,000. He said (5) clarifies that if a municipality does not receive a response, then they can perform the work themselves and (6) again, defines routine maintenance. He said the concern with the concept of this legislation from the start was not the threshold of \$50,000, but the concerns that counties wouldn't be able to perform those routine maintenance jobs with their regular crews if they were in excess of the threshold amount. There was also some concerns about local governments having their own gravel pits or quarries, so language was added to grandfather facilities. So, how do local contractors compete against local governments, who are funded by tax dollars, don't pay prevailing wages, don't bond their jobs, and don't have the normal overhead costs associated with private entities on construction projects without some sidebars. The simple answer is, they can't and it's not fair. This bill is a compromise to existing legislation. This bill set the threshold at \$50,000, permits routine maintenance, and grandfathers in gravel pits and quarries. This bill is about fairness for our local contractors. It is a compromise and will work to everyone's benefit. His talking points are included. **EXHIBIT (los38a04)**

Proponents' Testimony:

Mike Knodel, Rocky Mountain Road Maintenance said several years ago his family took over a company that was started in 1937, and was one of only two companies at the time. He thought with a little reorganization they might be able to make it work. He said they failed. He said as small contractor in the state he felt like he was being subjected to competition from local government, and he could not compete plain and simple. He said there was no way to go against the local governments who can provide the services for less than he can. He said they can only make money and pay taxes, if there was free enterprise. He said that was why they were in support of SB 372.

John Hansen Jr, COP Construction Company he said he was a proponent of the bill. He said he believed that most public works contractors were in favor of healthy local governments. He said they were pro public works, and they did believe that there are many services that are best provided by the public services, and others that are better performed by the private sector. He said the construction of public works projects is one of the latter. He said certain maintenance activities are most like better provided by the public sector. He believed that construction by contract is the most sufficient use of tax dollars and is the method that should be used for construction, rehabilitation, repair, and most but not all maintenance. He said he expected to pay taxes, and was glad to do so, but he did not expect to

compete with the public entities he pays those tax dollars to. He appreciated having the change to speak.

Bill McGuire, Blanick Construction said he as a proponent of the bill. He said Blanick Construction was a crushing, paving, grading company. He said they operated in Ravalli County. He said in the recent past they had found themselves competing with an increasingly aggressive county road building program. He said they made their living in industry that was founded on the principal of competitive bidding. He said the key word was competitive. He said there were two points he would like to make to the committee. First, Blanick Construction objects to any entity performing work in it's market without having to fairly compete for the privilege of doing that work. Second, the maintenance only through the process of competitive bidding, and award to the lowest responsible bidder can we ensure the tax payers of Montana the best return on their dollar.

Paul Thompson, Gilman Construction said they worked mostly in highway and road construction. He said they had discussions with local counties in the past and they were concerned about costs. He said they heard a lot that counties could do the work cheaper than contractors, but they were asked to take their word for that and no documentation of that is offered. He said they have found that the county's budgeting systems don't lend themselves to charging all the costs to specific projects like a contractor does. He said there are some big areas where local governments don't know or acknowledge all their costs, including the fringe benefits paid into insurance and pensions. He said the counties don't cost out their equipment, and have low utilization of specialized equipment. He said counties don't track their overhead and maintenance costs very well either. He said you were not comparing apples to apples. The counties just don't have the accounting and budget systems that are set up to track costs to a project. He maintained they did not take it on face value that counties could do the work cheaper. He said there were several advantages to the taxpayer of having the work done by contract rather than local governments. He said when local governments do their own work there are no protections in place if something goes wrong and it can end up costing a lot more money. He said he did have some disagreements with list that was floating around from Butte SilverBow. He said all the projects might have been performed in that county he did not believe they were all let to contract by the county.

Tim Crennen, JTL Group, Inc submitted written testimony.

EXHIBIT (los38a05)

{Tape: 3; Side: A}

Ray Becky, RoBec Construction said he was from Butte Montana and they had some problems with the county. He explained his situation. He said they supported the bill and hoped the committee would as well.

Mike Newton, Fisher Sand and Gravel submitted written testimony.
EXHIBIT(los38a06)

Jan Livesay, MT Lines, Great Falls said she would like to be on the record in support of the bill.

Chris Hafer, H&H Contracting Inc. said he was a proponent of the bill. He maintained they paid property taxes and equipment taxes, and as a result he felt they deserved the opportunity to bid on any construction project that comes up in his town. He said he had five employees that receive union wages, health insurance, and a retirement plan. He said if they were allowed the opportunity to bid and complete these jobs in their town, they would grow and create more tax revenue, and make the community a better place for everyone.

Karry Gray, Highway Specialties Inc. said he was in support of the bill.

George Schmidt, Schellinger Construction, said they were in support of the bill.

John Eyde, Pioneer Equipment submitted written testimony.
EXHIBIT(los38a07)

Ed Maronich, Maronich Construction said they were in support of the bill.

Lonnie Anderson, United Materials said he was in support of the bill.

Cary Hegreberg, MT Contractors Association said they were in support of SB 372.

Byron Roberts, MT Building Industry Association said they were in support of the bill.

Carl Schweitzer, ASAM said they were in support of SB 372.

Riley Johnson, NFIB said they were in support of the bill.

Webb Brown, MT Chamber of Commerce said they rose in support of SB 372.

Opponents' Testimony:

Alec Hansen, League of Cities and Towns said this was not the first time the Montana Legislature had examined this bill. He maintained in the past the legislature had generally had the good wisdom not to go along with this idea. He said it was really important that this bill would not give more flexibility to cities and towns. He maintained that this bill would require cities and towns across Montana to bid every project over \$50,000. He said that was not the case in current law and he wanted to clarify that. He said this means if one person bids on a job they get it. One bid is not competitive bidding. He said there were one billion dollars in infrastructure needs in Montana that would have to be met at some time. He said the league and the counties and others were doing everything they could do identify sources of money to build roads and streets and water and sewer systems. He said they should all be working together to keep up with the public requirements of the state of Montana and make sure that everybody works.

Jean Curtiss, Missoula County submitted a letter from Missoula County. **EXHIBIT (los38a08)**

Judy Jacobson, Butte SilverBow said they felt that they were contracting out an estimated 97% of the work that is done in Butte SilverBow. She gave some examples. She said they had a very depressed economy at the present time. She claimed they had recently advertised four jobs in the county and there were 230 applicants for those jobs. She conveyed that her public works people were concerned about losing their jobs, and they too pay taxes. She urged the committee to vote against the bill.

Dave Schultz, Assistant Public Works Director, said he wanted the committee to look at a display of the work that had been contracted by Butte since 1997 that totals about 100 million dollars. **EXHIBIT (los38a09)** He said this bill is for a problem that does not exist and he encouraged the committee to vote against it.

Jani McCall, City of Billings said they were very opposed to the bill. She said the City of Billings contracts out at least 80% of all the work it does. She said they are expected to provide quality safe public services. She said they need to make the right decisions for the right reasons, and they were doing that. She asked that they please oppose the bill.

Bill Iconoggle, Glacier County said they were opposed to the bill. He maintained they were not in the business of competing with local contractors. He said the majority of their maintenance crew was native Americans and they were concerned about those jobs. He

thought the language in this bill was too restrictive therefore he asked them to opposed SB 372.

John Ostlund, Yellowstone County said he was there in opposition to SB 372. He said there had been a lot of talk about comparing apples to apples. He said public safety and flexibility needed to be dealt with at the local level. He said counties needed to maintain cost effective services. He said they should support SB 46.

Eric Griffin, Lewis and Clark County submitted written testimony. **EXHIBIT(los38a10)**

Dave O'Connel, Public Employees Labor Local 254 submitted written testimony. **EXHIBIT(los38a11)**

Bruce Bender, City of Missoula said the city contracted out over 90% of their work. He said there is problems with the wording in the bill. He said it was to broad.

Clark Johnson, City of Bozeman said they were opposed to the bill.

Glen Gregor, Laborers Local 254 said he was opposed to the bill because of the vagueness on the building maintenance.

J Gail Patton, Sanders County said they were opposed to the bill.

Gordon Morris, MT Association of Counties said they were opposed to the bill.

Mona Jamison, Gallatin County said they opposed the bill.

Joe Mazurek, City of Great Falls said the city of Great Falls opposed the bill.

Jack Knorr, MACRS submitted written testimony. **EXHIBIT(los38a12)**

Tim Burton, City of Helena said they stood in opposition to the bill.

Vern Peterson, MT Association of Counties said they were opposed to the bill.

Elaine Allestad, Sweet Grass County said they were opposed to the bill.

Tom Schneider, MPEA wanted to go on record in opposition to the bill.

Jim Reno, Yellowstone County said this was not broke and he hoped they would not try to fix it.

Don Judge, Local Teamster 254 submitted written testimony.
EXHIBIT(los38a13)

Questions from Committee Members and Responses:

SENATOR GLASER said he had seen that **Eric Griffin** was a proponent to the original bill HB 338 that started this argument. He asked if he did not feel at that particular time that the words that are causing problems now were a problem at that time.

Eric Griffin said the only intention of HB 338 in 1999 was to raise the limit from \$20,000 to \$50,000. He said it was not their intention that they would have to enter into a contract for they work they do.

SENATOR GLASER said the thing that was troubling him, was the amendment that changed the way you did things, happened in the House several weeks before his testimony in the Senate. He did not understand that.

Eric Griffin said he was not aware of nor did he pay attention to the amendment that was added in the house.

{Tape: 3; Side: B}

SENATOR ESP asked the sponsor if he felt he had found some middle ground with this bill.

SENATOR LAIBLE said being an eternal optimist, he always believed there was middle ground, and compromise. He said in all honesty his hope was that cooler heads would prevail. He hoped the parties could come together with some sort of compromise.

SENATOR ELLIOT said the new language in this bill says that the cities and counties must bid out for construction management services. He wondered if that was correct.

SENATOR LAIBLE said that was correct. He said that language would be amended.

SENATOR ELLIOT asked how it would be amended.

SENATOR LAIBLE replied he would have to talk to the people who were assisting him on the bill. He said it would probably be taken out.

SENATOR ELLIOT asked if he was aware of a 1978 Attorney General's opinion that hiring a construction manager is exempt.

SENATOR LAIBLE said that being the case, there would be no option but to exempt that out.

SENATOR ELLIOT asked if **Vern Peterson** was an elected official.

Vern Peterson replied he was.

SENATOR ELLIOT said that part of his duties as an elected official would be to exercise his judgment on behalf of his constituents.

Vern Peterson replied absolutely.

SENATOR ELLIOTT asked if he felt his judgements had been satisfying his constituents.

Vern Peterson said he had been elected three times.

SENATOR ELLIOTT said then he would accept that as proof that he was doing his job ok under the present laws.

Vern Peterson replied that was the report card he went by.

Closing by Sponsor:

SENATOR LAIBLE said it was a great hearing. He asked them to take a look at the existing statutes and then look at the bill and make a choice as to which one provides more flexibility. He maintained the new bill provided more flexibility than the existing language and was better for local governments. He said he left the definition of routine maintenance very flexible. He said if no one bid on the project they could do they work themselves. He said this put some side boards on so the county commissioners ran their construction in their counties in an ethical and up front manner. He said one of the county commissioners said this isn't broke, he said this bill provided even more flexibility and was even better. He thanked the committee for the good hearing.

EXECUTIVE ACTION ON SB 406

Motion: SEN. GLASER moved that SB 406 DO PASS.

Motion: SEN. WHEAT moved that AMENDMENT SB040601.ALK DO PASS.

Discussion:

SENATOR WHEAT read and explained the amendment. **EXHIBIT (los38a14)**

SENATOR GEBHARDT said he missed the amendment.

SENATOR BOHLINGER asked **SENATOR WHEAT** to read the amendment again.

SENATOR WHEAT read the amendment.

SENATOR GEBHARDT asked if did not think that was already addressed further up on page 2 line 8 and 9.

SENATOR WHEAT said he thought the amendment would make it clear.

SENATOR GEBHARDT said he thought it was fine, he just did not think it was needed.

Vote: Motion carried unanimously.

Motion/Vote: SEN. GLASER moved that SB 406 DO PASS AS AMENDED.
Motion carried unanimously.

EXECUTIVE ACTION ON SB 399

Motion: SEN. GLASER moved that SB 399 DO PASS.

Motion/Vote: SEN. BOHLINGER moved that AMENDMENT SB039901.ALK DO PASS. Motion carried unanimously.

Motion: SEN. GLASER moved that SB 399 DO PASS AS AMENDED.

Discussion:

SENATOR ESP said he would not support the motion. He thought it was premature.

SENATOR ELLIOTT said he had carried a similar bill to this last session. He said the one in the Spokane valley had been very successful. He said the municipality did not have to do it. He said they were expensive but they did work. He said he would support the bill.

SENATOR WHEAT said he agreed with **SENATOR ESP**. He said he supported the concept but because he did not know enough about it, he felt it was premature. He said he was concerned about the speeds at which the trains were traveling through the communities.

SENATOR ELLIOTT said it was all coming back to him now. He said in the Spokane study they put up a four quadrant crossing, so that a vehicle would not be able to cross. He said there were two control groups, one as things were, and one with the fully guarded crossing, whistle blowing, and third was fully guarded whistle not blowing. He maintained there were just as many cars that attempted to cross in the second and third group, but three times as many cars attempted to go across the original crossing. So in either case blowing or not blowing the whistle was equally effective.

SENATOR GEBHARDT asked what sort of equipment was necessary in a quiet zone crossing.

SENATOR BOHLINGER said if a quiet zone was established, a secure crossing would have to be put in. Gates would be automatically closed, traffic would be funneled in such a way that they could not go around the gates, lights would flash, but know whistles would blow.

SENATOR GEBHARDT asked if that would be the case at all the crossings.

SENATOR BOHLINGER replied that was correct.

SENATOR LAIBLE said in this bill the liabilities for not blowing the whistle was eliminated for the railroads. In the event that there was a serious accident because the whistle was not blown and someone was injured or killed, would they not have any recourse. Who would the liability go to.

{Tape: 4; Side: A}

SENATOR WHEAT said he did not think it would go to the county because of an enactment of a quiet zone. He said in order to do this is sounded like there had to be an impenetrable barrier to the tracks it would be a pretty tough case. He said railroad crossing accidents are complex, but under this particular situation he thought it would be hard for this person to recover.

SENATOR MANGAN said the sponsor had stated his community had wanted to take a look at this, yet there were no proponents. He was curious why the people from Billings that were in the audience had not said anything.

SENATOR BOHLINGER said the city of Billings had not taken a position and would not be funding the effort. He thought the property owners along Montana and Minnesota avenues would be funding this through an SID process.

SENATOR MANGAN said he would support the bill, he thought it provided local control. He said it was permissive and he did not see an issue with passing it.

SENATOR BLACK said he was a little uncomfortable about the bill. He did not think the safeguards were spelled out clearly enough. He said the speed of the train was not addressed in a quiet zone. He thought that should be considered. He said he was in favor of the concept, but was hesitant to approve this without having more information.

SENATOR BOHLINGER said to look at page 1, lines 20 through 22. He said the quiet zones had to meet the requirements of the program. This bill would only enable a municipality to submit a request.

SENATOR CROMLEY said he thought he would vote against the bill, because he did not see the good in it. He was concerned about the immunity granted in the bill.

SENATOR ELLIOTT said he did not think that any constitutional case had been brought on the preamble to the state constitution, but he wanted to remind the committee that the preamble states "we the people of Montana, grateful for the quiet beauty of our state."

Vote: Motion carried 6-5 with **BLACK, CROMLEY, ESP, SQUIRES, and WHEAT** voting no.

EXECUTIVE ACTION ON SB 426

Motion: SEN. ESP moved SB 426 be reconsidered.

Substitute Motion: SEN. MANGAN moved that SB 426 BE INDEFINITELY POSTPONED.

Discussion:

SENATOR GEBHARDT said the bill had some merit, but that it was pretty heavy handed action by this committee to ensure that a municipality could not put a building fee on a new home that was built.

SENATOR WHEAT said he understood **SENATOR GEBHARDT'S** position but he did not think the committee was being heavy handed. He said they had heard the testimony, had discussion, and the vote was adverse. He said in all his other committees when a bill failed a vote they got indefinitely postponed immediately. He did not

think they should reconsider this bill, he thought they should vote to indefinitely postpone.

SENATOR GLASER said they would prefer not to have do not pass motions on the Senate Floor. He said unless they reconsidered their action and then indefinitely postpone it, then it would go out as a do not pass.

SENATOR WHEAT said he understood that, he did not want it to go to the floor with a do not pass recommendation. He thought it should be indefinitely postponed.

SENATOR GLASER said if the substitute motion prevailed then really what the motion was, was to reconsider our action and that was approved and then the motion to indefinitely postpone would be considered. If that failed then the motion to reconsider our action was accepted then they could make another motion.

SENATOR ELLIOTT said he believed the motion of indefinitely postpone was not in order because the motion to reconsider their action takes precedence.

SENATOR GLASER said that he was probably correct. He said they were reconsidering their action and then there was a motion to indefinitely postponed.

SENATOR MANGAN withdrew his motion.

SENATOR MANGAN said they needed to get through the first motion so they could either reconsider or indefinitely postpone.

SENATOR BOHLINGER said the motion now stood to reconsider their action on SB 406.

SENATOR SQUIRES asked if it came out the same way, what had they accomplished.

SENATOR GLASER replied if they did not reconsider their action the bill would go out on the floor with a do not pass motion. He maintained leadership did not want bills to go to the floor that way.

SENATOR SQUIRES said she understood that. She thought that indefinitely postponed was second in rank.

SENATOR BOHLINGER said the motion on the table was to reconsider their action on SB 399.

SENATOR GLASER said the problem was they were going back and reconsidering their action on a motion from the other day that was do pass and failed.

SENATOR BOHLINGER said he would like them to vote on the reconsider motion.

Vote: Motion carried 7-4 with **CROMLEY, ELLIOTT, SQUIRES, and WHEAT** voting no.

Motion: **SEN. MANGAN** moved that SB 426 BE INDEFINITELY POSTPONED.

Discussion:

SENATOR ESP urged them to resist the motion.

SENATOR LAIBLE concurred with **SENATOR ESP** and **SENATOR GEBHARDT**.

SENATOR GLASER said he would not support this motion.

Vote: Motion failed 5-6 with **BLACK, BOHLINGER, ESP, GEBHARDT, GLASER, and LAIBLE** voting no.

Motion: **SEN. ESP** moved that SB 426 DO PASS on a reverse vote.

EXECUTIVE ACTION ON SB 293

Motion: **SEN. WHEAT** moved that SB 293 DO PASS.

Motion: **SEN. WHEAT** moved that AMENDMENT SB029301.ALK DO PASS.

SENATOR WHEAT explained that the dark areas on the bill he handed out explained what the amendments did. **EXHIBIT(1os38a15)**

{Tape: 4; Side: B}

SENATOR WHEAT finished explaining his amendments.

Vote: Motion carried unanimously.

Motion: **SEN. WHEAT** moved that SB293 DO PASS AS AMENDED.

Discussion:

SENATOR ESP asked **SENATOR WHEAT** about what was left on line 22. He thought what they were really saying was a little or slightly

higher priority is given to it. He wondered if he would be adverse to looking at that section and saying that the rules must provide that the priority as stated be given to those projects, or something to that effect.

SENATOR WHEAT said he did not have a problem with that.

Leanne Kurtz said she understood that amendment.

Motion: **SEN. ESP moved that CONCEPTUAL AMENDMENT DO PASS.**

SENATOR WHEAT said he thought **SENATOR ESP** was trying to make that section on lines 21 - 23 to be consistent with the next two sections regarding TSEP. He thought it should just say it be given a priority as established in the next section.

Leanne Kurtz read the amendment back.

Vote: **Motion carried unanimously.**

Motion: **SEN. WHEAT moved that SB 293 DO PASS AS AMENDED.**

Discussion:

SENATOR GEBHARDT asked for clarification. He asked if the way they bill was amended now if it put a priority on having this policy done for using TSEP funds.

SENATOR WHEAT said he thought it created an incentive to look at TSEP funds a source of revenue for the areas that the have identified in their growth policy.

SENATOR SQUIRES asked if there were two hits for TSEP now.

SENATOR WHEAT replied they go through the various priorities and you could qualify under different sections. He thought you could qualify under more than one.

SENATOR ELLIOTT said that this would be a tie breaker. In the event everything is equal this would trump the other proposal.

SENATOR ESP said he could not support the bill. He appreciated all the work they had done but thought it was a back door approach and would not vote for it.

SENATOR BLACK said he was concerned with the long range impacts as stated in the fiscal note, that smaller towns and communities would be less competitive than the larger towns. He thought a lot

of smaller communities had been waiting a long time for these funds, and he could not support that.

SENATOR LAIBLE said his concern was that there was a finite amount of funds, and a larger city could take some funds that were rightly due to a smaller more deserving community. He said he could not support the bill.

Vote: Motion carried 6-5 with **BLACK, ESP, GEBHARDT, GLASER, and LAIBLE** voting no.

ADJOURNMENT

Adjournment: 7:15 P.M.

SEN. JOHN C. BOHLINGER, Chairman

PHOEBE OLSON, Secretary

JB/PO

EXHIBIT (los38aad)